UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE **HOLOCAUST VICTIM ASSETS LITIGATION** **Application of Burt Neuborne**	**Docket No. 06-983 (ERK) (JO)**

SUPPLEMENTAL DECLARATION OF ROBERT A. SWIFT IN OPPOSITION TO LEAD SETTLEMENT COUNSEL'S APPLICATION FOR COUNSEL FEES

Robert A. Swift, an attorney duly admitted to practice before this Court, hereby declares:

1. I am a senior member of the Philadelphia, Pennsylvania law firm of Kohn Swift & Graf, P.C. which is counsel for the Settlement Class in the above-captioned action. I have served as co-chair of the Plaintiffs' Executive Committee during the litigation and settlement of this lawsuit. I was personally involved in the settlement of this litigation, the creation of the Settlement Fund and certain post-settlement motions and appeals. On behalf of the Settlement Class, I supplement my earlier Declaration to rebut some of the assertions made by Mr. Neuborne in his Declaration of March 17, 2006.

2. At page 85 of his Declaration dated March 17, 2006, Mr. Neuborne accuses me of opposing his $5.6 million fee petition for self-serving reasons to

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"punish" him. In other words, the problem is the messenger, not the message. The accusation is false.

3. In the Swiss Bank litigation I strongly opposed the approximately $6 million fee petition filed by Samuel Dubbin and his client. The Court declined to award Mr. Dubbin or his client a fee. More recently I filed comments on the fee petitions of Lieff Cabraser, Milberg Weiss, Deborah Sturman and Richard Weisberg. Common to those fee petitions and the Neuborne fee petition is my objection that the class must receive advance notice thereof pursuant to Rule 23(h).

4. I have also objected to fee petitions in other litigation and have done so on a *pro bono* basis. In the *Austrian and German Bank Holocaust Litigation* (S.D.N.Y.) in which I was lead counsel, I objected to Cohen Milstein's cost reimbursement of about $56,000 for database research of archival files since that work was not shared with co-counsel and did nothing to advance the litigation. The court upheld this objection. In the summer of 2005, I not only objected to a $4,000 fee petition but successfully took the matter to trial in state court in Pennsylvania. The case involved the tragic vehicular death of the son of a friend of mine and an attorney who overreached in trying to represent the decedent's estate.

5. Thus, on a principled basis, I have opposed fee petitions that I believe are unjustifiable while supporting the payment of fees which are warranted. Usually courts have agreed with my objections.

6. In his Declaration of March 17, 2006 at pages 81-83 Mr. Neuborne claims that as class counsel (a) I was principally responsible for drafting the Settlement Agreement of January 26, 1999, (b) the drafting was deficient, and (c) as Lead Settlement Counsel Mr. Neuborne spent significant time correcting and litigating over the Agreement's deficiencies.

7. Following the oral settlement agreement of August 12, 1998, it took five months to negotiate and draft a written Settlement Agreement with the Swiss Banks. Mr. Hausfeld (of Cohen Milstein) and myself took the lead in this process on behalf of the Plaintiffs Executive Committee of which we were co-chairs.

8. The negotiations involved numerous face-to-face negotiations with attorneys for the Swiss Banks and five separate drafts. Each draft was circulated to all members of the Plaintiffs' Executive Committee for comment, including Mr. Neuborne. Conference calls were held among Plaintiffs counsel to discuss revisions. A final drafting session, which I led for Plaintiffs, was held with the Swiss Bank attorneys in January 1999 in New York City with most members of the Plaintiffs Executive Committee present or represented. Mr. Neuborne did not attend the final drafting session. The entire negotiating process was fluid among

plaintiffs' counsel and achieved consensus among them, very unlike the post-settlement activities led by Mr. Neuborne.

9. Throughout the negotiations over a written agreement I received many drafting comments from my co-counsel but do not recall any meaningful comments from Mr. Neuborne. My principal recollection of Mr. Neuborne's comments during this period had to do with the "legal peace" the Swiss Banks demanded, meaning the silencing of overt criticism by legal counsel and Jewish NGO's. Mr. Neuborne's position was that, as an academic, he would never by silenced in his criticism even if this placed the benefits to the Class in jeopardy.

10. The negotiation of the Settlement Agreement necessitated tradeoffs which all Plaintiffs counsel agreed to. The final negotiation of these tradeoffs took place in Chief Judge Korman's chambers late into a January 1999 night at which Mr. Neuborne was present.

11. If the Settlement Agreement lacked specificity in some respects which led to later disagreement, Mr. Neuborne bears equal responsibility for these deficiencies either by his inattention or consent to the final document. The post-settlement disagreements are as much a reflection of Mr. Neuborne's unpolished skills as a negotiator as they are a lack of specificity in the Settlement Agreement. In fairness to all attorneys involved in the process, no party received everything he wanted, as was borne out by the post-settlement disagreements. It also bears

emphasis that the Court approved the Settlement Agreement subject to later modifications for artwork and insurance claims.

I declare under penalty of perjury that the foregoing is true and correct.

July 21, 2006

Robert A. Swift (RS-8630)